

AMENDED IN ASSEMBLY MARCH 26, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

No. 1915

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**Introduced by Assembly Member Alejo**

February 22, 2012

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~~An act to amend Sections 110460, 111940, 111955, 113789, 114021, and 114023 of, and to add Article 5 (commencing with Section 113400) to Chapter 11 of Part 6 of Division 104 of, the Health and Safety Code, relating to food safety. An act to amend Section 2333.5 of the Streets and Highways Code, relating to transportation.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 1915, as amended, Alejo. ~~Food safety: cottage food productions. Safe routes to school.~~

*Existing law requires the Department of Transportation, in consultation with the California Highway Patrol, to establish and administer a "Safe Routes to School" program for construction of bicycle and pedestrian safety and traffic calming projects, and to award grants to local agencies in that regard from available federal and state funds, based on the results of a statewide competition. Existing law sets forth various factors to be used to rate proposals submitted by applicants for these funds.*

*This bill would provide that up to 10% of program funds may be used to assist eligible recipients in making infrastructure improvements, other than schoolbus shelters, that create safe routes to bus stops located outside of the vicinity of schools.*

~~Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food,~~

~~drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to engage in the manufacturing, packing, or holding of processed food in this state without a valid registration from the department, or to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.~~

~~The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law also prohibits food stored or prepared in a private home from being used or offered for sale in a food facility. A violation of these provisions is a misdemeanor.~~

~~This bill would exempt a cottage food production, as defined, from specified food processing establishment, Sherman Law, and California Retail Food Code requirements. This bill would require a cottage food production to meet specified requirements relating to where cottage foods may be sold and labeling of those foods. This bill would authorize the State Department of Public Health to sample and inspect the cottage foods for adulteration and misbranding, as specified. This bill would prescribe civil penalties for violation of its provisions.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 2333.5 of the Streets and Highways Code*
- 2     *is amended to read:*
- 3     2333.5. (a) The department, in consultation with the
- 4     Department of the California Highway Patrol, shall establish and
- 5     administer a “Safe Routes to School” construction program for
- 6     construction of bicycle and pedestrian safety and traffic calming
- 7     projects.
- 8     (b) The department shall award grants to local governmental
- 9     agencies under the program based on the results of a statewide
- 10    competition that requires submission of proposals for funding and
- 11    rates those proposals on all of the following factors:
- 12    (1) Demonstrated needs of the applicant.

1 (2) Potential of the proposal for reducing child injuries and  
2 fatalities.

3 (3) Potential of the proposal for encouraging increased walking  
4 and bicycling among students.

5 (4) Identification of safety hazards.

6 (5) Identification of current and potential walking and bicycling  
7 routes to school.

8 (6) Use of a public participation process, including, but not  
9 limited to, a public meeting that satisfies all of the following:

10 (A) Involves the public, schools, parents, teachers, local  
11 agencies, the business community, key professionals, and others.

12 (B) Identifies community priorities and gathers community  
13 input to guide the development of projects included in the proposal.

14 (C) Ensures that community priorities are reflected in the  
15 proposal.

16 (D) Secures support for the proposal by relevant stakeholders.

17 (7) Benefit to a low-income school, defined for purposes of this  
18 section to mean a school where at least 75 percent of students are  
19 eligible to receive free or reduced-price meals under the National  
20 School Lunch Program.

21 (c) Any annual budget allocation to fund grants described in  
22 subdivision (b) shall be in addition to any federal funding received  
23 by the state that is designated for “Safe Routes to School” projects  
24 pursuant to Section 1404 of SAFETEA-LU or any similar program  
25 funded through a subsequent transportation act.

26 (d) Any federal funding received by the state that is designated  
27 for “Safe Routes to School” projects shall be distributed by the  
28 department under the competitive grant process, consistent with  
29 all applicable federal requirements.

30 (e) Prior to the award of any construction grant or the  
31 department’s use of those funds for a “Safe Routes to School”  
32 construction project encompassing a freeway, state highway, or  
33 county road, the department shall consult with, and obtain approval  
34 from, the Department of the California Highway Patrol, ensuring  
35 that the “Safe Routes to School” proposal complements the  
36 California Highway Patrol’s Pedestrian Corridor Safety Program  
37 and is consistent with its statewide pedestrian safety statistical  
38 analysis.

1 (f) The department is encouraged to coordinate with law  
2 enforcement agencies' community policing efforts in establishing  
3 and maintaining the "Safe Routes to School" construction program.

4 (g) In the development of guidelines and procedures governing  
5 this program, the department shall fully consider the needs of  
6 low-income schools.

7 (h) *Up to 10 percent of program funds may be used to assist*  
8 *eligible recipients in making infrastructure improvements, other*  
9 *than schoolbus shelters, that create safe routes to bus stops that*  
10 *are located outside the vicinity of schools.*

11 ~~SECTION 1. Section 110460 of the Health and Safety Code~~  
12 ~~is amended to read:~~

13 ~~110460. No person shall engage in the manufacture, packing,~~  
14 ~~or holding of any processed food in this state unless the person~~  
15 ~~has a valid registration from the department, except those engaged~~  
16 ~~exclusively in the storing, handling, or processing of dried beans.~~  
17 ~~The registration shall be valid for one calendar year from the date~~  
18 ~~of issue, unless it is revoked. The registration shall not be~~  
19 ~~transferable. This section shall not apply to a cottage food~~  
20 ~~production, as defined in Section 113400.~~

21 ~~SEC. 2. Section 111940 of the Health and Safety Code is~~  
22 ~~amended to read:~~

23 ~~111940. (a) If any person violates any provision of Chapter 4~~  
24 ~~(commencing with Section 111950), Chapter 5 (commencing with~~  
25 ~~Section 112150), Chapter 6 (commencing with Section 112350),~~  
26 ~~Chapter 7 (commencing with Section 112500), Chapter 8~~  
27 ~~(commencing with Section 112650), Chapter 10 (commencing~~  
28 ~~with Section 113025), Article 3 (commencing with Section 113250)~~  
29 ~~of Chapter 11 of this part, Article 5 (commencing with Section~~  
30 ~~113400) of Chapter 11 of this part, or Chapter 4 (commencing~~  
31 ~~with Section 108100) of Part 3, or any regulation adopted pursuant~~  
32 ~~to these provisions, the department may assess a civil penalty~~  
33 ~~against that person as provided by this section.~~

34 ~~(b) The penalty may be in an amount not to exceed one thousand~~  
35 ~~dollars (\$1,000) per day. Each day that a violation continues shall~~  
36 ~~be considered a separate violation.~~

37 ~~(c) If, after examination of a possible violation and the facts~~  
38 ~~surrounding that possible violation, the department concludes that~~  
39 ~~a violation has occurred, the department may issue a complaint to~~  
40 ~~the person charged with the violation. The complaint shall allege~~

1 the acts or failures to act that constitute the basis for the violation  
2 and the amount of the penalty. The complaint shall be served by  
3 personal service or by certified mail and shall inform the person  
4 so served of the right to a hearing.

5 (d) Any person served with a complaint pursuant to subdivision  
6 (e) of this section may, within 20 days after service of the  
7 complaint, request a hearing by filing with the department a notice  
8 of defense. A notice of defense is deemed to have been filed within  
9 the 20-day period if it is postmarked within the 20-day period. If  
10 a hearing is requested by the person, it shall be conducted within  
11 90 days after the receipt by the department of the notice of defense.  
12 If no notice of defense is filed within 20 days after service of the  
13 complaint, the department shall issue an order setting the penalty  
14 as proposed in the complaint unless the department and the person  
15 have entered into a settlement agreement, in which case the  
16 department shall issue an order setting the penalty in the amount  
17 specified in the settlement agreement. When the person has not  
18 filed a notice of defense or where the department and the person  
19 have entered into a settlement agreement, the order shall not be  
20 subject to review by any court or agency.

21 (e) Any hearing required under this section shall be conducted  
22 pursuant to the procedures specified in Section 100171, except to  
23 the extent they are inconsistent with the specific requirements of  
24 this section.

25 (f) Orders setting civil penalties under this section shall become  
26 effective and final upon issuance thereof, and payment shall be  
27 made within 30 days of issuance. A copy of the order shall be  
28 served by personal service or by certified mail upon the person  
29 served with the complaint.

30 (g) Within 30 days after service of a copy of a decision issued  
31 by the director after a hearing, any person so served may file with  
32 the superior court a petition for writ of mandate for review of the  
33 decision. Any person who fails to file the petition within this  
34 30-day period may not challenge the reasonableness or validity of  
35 the decision or order of the director in any judicial proceeding  
36 brought to enforce the decision or order or for other remedies.  
37 Section 1094.5 of the Code of Civil Procedure shall govern any  
38 proceedings conducted pursuant to this subdivision. In all  
39 proceedings pursuant to this subdivision, the court shall uphold  
40 the decision of the director if the decision is based upon substantial

1 evidence in the whole record. The filing of a petition for writ of  
2 mandate shall not stay any corrective action required pursuant to  
3 the Miscellaneous Food, Food Facility, and Hazardous Substances  
4 Act, as defined in subdivision (b) of Section 27, or the accrual of  
5 any penalties assessed pursuant to this section. This subdivision  
6 does not prohibit the court from granting any appropriate relief  
7 within its jurisdiction.

8 (h) The remedies under this section are in addition to, and do  
9 not supersede, or limit, any and all other remedies, civil or criminal.

10 SEC. 3. Section 111955 of the Health and Safety Code is  
11 amended to read:

12 111955. “Food processing establishment,” as used in this  
13 chapter, shall mean any room, building or place or portion thereof,  
14 maintained, used or operated for the purpose of commercially  
15 storing, packaging, making, cooking, mixing, processing, bottling,  
16 canning, packing, slaughtering or otherwise preparing or handling  
17 food except restaurants. “Food processing establishment” shall  
18 not include a cottage food production, as defined in Section  
19 113400.

20 SEC. 4. Article 5 (commencing with Section 113400) is added  
21 to Chapter 11 of Part 6 of Division 104 of the Health and Safety  
22 Code, to read:

23  
24 Article 5. Cottage Food Productions  
25

26 113400. Unless otherwise provided, terms used in this article  
27 have the same meanings as those found under the California Retail  
28 Food Code (Part 7 (commencing with Section 113700)).  
29 Additionally, for purposes of this article, the following definitions  
30 apply:

31 (a) “Adulterated” means either of the following:

32 (1) Food that bears or contains any poisonous or deleterious  
33 substance that may render the food impure or injurious to health.

34 (2) Food that is manufactured, prepared, or stored in a manner  
35 that deviates from a HACCP plan, as defined in Section 113801,  
36 as to pose a discernable increase in risk.

37 (b) “Cottage food” means home produced food that is not  
38 potentially hazardous, as defined by Section 113871, and is offered  
39 for retail sale. Nonpotentially hazardous foods include, but are not  
40 limited to, baked products that do not have cream, custard, or meat

1 fillings; jams; jellies; candy; granola and other dry cereal; popcorn;  
2 fruit butter; waffle cones and pizzelles; nut mixes; chocolate  
3 covered nonperishables, including nuts and dried fruit; roasted  
4 coffee; dry baking mixes; herb blends; dry teas; and honey.

5 (e) “Cottage food production” means the production of food by  
6 a person who, in his or her own home, produces nonpotentially  
7 hazardous food items to be sold to consumers.

8 (d) “Director” means the Director of the State Department of  
9 Public Health.

10 (e) “Potentially hazardous foods” has the same meaning as  
11 provided in Section 113871.

12 113401. A cottage food production shall be subject to the  
13 following labeling requirements:

14 (a) A cottage food production shall package and label any food  
15 it produces or packages for sale in compliance with the labeling  
16 requirements of the Federal Food, Drug, and Cosmetic Act (21  
17 U.S.C. Sec. 343-1, et seq.).

18 (b) All cottage food product labels shall contain the statement,  
19 “This Product is Home Produced.”

20 113402. Cottage foods may only be sold at facilities licensed  
21 to sell food or at the site of the cottage food production.

22 113403. A cottage food production shall not be subject to  
23 registration or fee requirements of the Sherman Food, Drug, and  
24 Cosmetic Law (Part 5 (commencing with Section 109875)).

25 113404. (a) The provisions of this article shall be administered  
26 by the State Department of Public Health.

27 (b) For purposes of determining compliance with this article,  
28 based on a consumer complaint, the director, or his or her  
29 representative, may sample and inspect the cottage food for  
30 misbranding and adulteration. Notwithstanding any other law, the  
31 authorization to inspect the cottage food is limited to after the  
32 cottage food has left the cottage food production site.

33 SEC. 5. Section 113789 of the Health and Safety Code is  
34 amended to read:

35 113789. (a) “Food facility” means an operation that stores,  
36 prepares, packages, serves, vends, or otherwise provides food for  
37 human consumption at the retail level, including, but not limited  
38 to, the following:

39 (1) An operation where food is consumed on or off the premises;  
40 regardless of whether there is a charge for the food.

1     ~~(2) Any place used in conjunction with the operations described~~  
2 ~~in this subdivision, including, but not limited to, storage facilities~~  
3 ~~for food-related utensils, equipment, and materials.~~

4     ~~(b) “Food facility” includes permanent and nonpermanent food~~  
5 ~~facilities, including, but not limited to, the following:~~

6     ~~(1) Public and private school cafeterias.~~

7     ~~(2) Restricted food service facilities.~~

8     ~~(3) Licensed health care facilities.~~

9     ~~(4) Commissaries.~~

10    ~~(5) Mobile food facilities.~~

11    ~~(6) Mobile support units.~~

12    ~~(7) Temporary food facilities.~~

13    ~~(8) Vending machines.~~

14    ~~(9) Certified farmers’ markets, for purposes of permitting and~~  
15 ~~enforcement pursuant to Section 114370.~~

16    ~~(10) Farm stands, for purposes of permitting and enforcement~~  
17 ~~pursuant to Section 114375.~~

18    ~~(e) “Food facility” does not include any of the following:~~

19    ~~(1) A cooperative arrangement wherein no permanent facilities~~  
20 ~~are used for storing or handling food.~~

21    ~~(2) A private home, including a cottage food production, as~~  
22 ~~defined in Section 113400.~~

23    ~~(3) A church, private club, or other nonprofit association that~~  
24 ~~gives or sells food to its members and guests, and not to the general~~  
25 ~~public, at an event that occurs not more than three days in any~~  
26 ~~90-day period.~~

27    ~~(4) A for-profit entity that gives or sells food at an event that~~  
28 ~~occurs not more than three days in a 90-day period for the benefit~~  
29 ~~of a nonprofit association, if the for-profit entity receives no~~  
30 ~~monetary benefit, other than that resulting from recognition from~~  
31 ~~participating in an event.~~

32    ~~(5) Premises set aside for wine tasting, as that term is used in~~  
33 ~~Section 23356.1 of the Business and Professions Code and in the~~  
34 ~~regulations adopted pursuant to that section, that comply with~~  
35 ~~Section 118375, regardless of whether there is a charge for the~~  
36 ~~wine tasting, if no other beverage, except for bottles of wine and~~  
37 ~~prepackaged nonpotentially hazardous beverages, is offered for~~  
38 ~~sale for onsite consumption and no food, except for crackers, is~~  
39 ~~served.~~



1     ~~(6) Premises operated by a producer, selling or offering for sale~~  
2     ~~only whole produce grown by the producer, or shell eggs, or both,~~  
3     ~~provided the sales are conducted on premises controlled by the~~  
4     ~~producer.~~

5     ~~(7) A commercial food processing plant as defined in Section~~  
6     ~~111955.~~

7     ~~(8) A child day care facility, as defined in Section 1596.750.~~

8     ~~(9) A community care facility, as defined in Section 1502.~~

9     ~~(10) A residential care facility for the elderly, as defined in~~  
10    ~~Section 1569.2.~~

11    ~~(11) A residential care facility for the chronically ill, which has~~  
12    ~~the same meaning as a residential care facility, as defined in Section~~  
13    ~~1568.01.~~

14    ~~(12) Premises set aside by a beer manufacturer, as defined in~~  
15    ~~Section 25000.2 of the Business and Professions Code, that comply~~  
16    ~~with Section 118375, for the purposes of beer tasting, regardless~~  
17    ~~of whether there is a charge for the beer tasting, if no other~~  
18    ~~beverage, except for beer and prepackaged nonpotentially~~  
19    ~~hazardous beverages, is offered for sale for onsite consumption,~~  
20    ~~and no food, except for crackers or pretzels, is served.~~

21    ~~SEC. 6. Section 114021 of the Health and Safety Code is~~  
22    ~~amended to read:~~

23    ~~114021. (a) Food shall be obtained from sources that comply~~  
24    ~~with all applicable laws.~~

25    ~~(b) Food stored or prepared in a private home shall not be used~~  
26    ~~or offered for sale in a food facility, unless that food is produced~~  
27    ~~by a cottage food production that meets the requirements of Article~~  
28    ~~5 (commencing with Section 113400) of Chapter 11 of Part 6.~~

29    ~~SEC. 7. Section 114023 of the Health and Safety Code is~~  
30    ~~amended to read:~~

31    ~~114023. Food in a hermetically sealed container shall be~~  
32    ~~obtained from a food processing plant that is regulated by the food~~  
33    ~~regulatory agency that has jurisdiction over the plant, or from a~~  
34    ~~cottage food production that meets the requirements of Article 5~~  
35    ~~(commencing with Section 113400) of Chapter 11 of Part 6.~~